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October 13, 2004

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PUBLIC SERVICE
COMMISSION

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: *Application of Louisville Gas and Electric Company for an Adjustment of its Gas and Electric Rates, Terms and Conditions*
Case No. 2003-00433

Application of Kentucky Utilities Company for an Adjustment of its Electric Rates, Terms and Conditions
Case No. 2003-00434 ✓

Dear Ms. O'Donnell:

Enclosed please accept for filing two originals and five (5) copies each of Louisville Gas and Electric Company's and Kentucky Utilities Company's Response to Status Report of Attorney General in the above-referenced matters. Please confirm your receipt of these filings by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,

Kendrick R. Riggs

KRR/ec
Enclosures
cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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OCT 13 2004

PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY FOR AN ADJUSTMENT) CASE NO. 2003-00433
OF THE GAS AND ELECTRIC RATES,)
TERMS AND CONDITIONS)

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR AN ADJUSTMENT) CASE NO. 2003-00434
OF THE ELECTRIC RATES, TERMS AND)
CONDITIONS)

**LOUISVILLE GAS AND ELECTRIC COMPANY'S AND
KENTUCKY UTILITIES COMPANY'S
RESPONSE TO STATUS REPORT OF ATTORNEY GENERAL**

Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") (collectively, the "Companies"), by counsel, file this response to the Status Report of Attorney General ("Status Report") filed with the Kentucky Public Service Commission ("Commission") on October 12, 2004 by the Office of the Attorney General ("AG").

The Status Report states that the AG's efforts to conduct its investigation "have been thwarted in part by the refusal of LG&E to produce certain records which are responsive" to a Civil Subpoena and Investigative Demand ("CID") issued on August 30, 2004. The Report requests the Commission to continue to hold its investigation and the rehearing of these rate cases in abeyance while it continues its investigation indefinitely. (Status Report, pp. 1, 3).

The Companies and their customers have a well-established right to a final determination of these rate proceedings "within a reasonable time and in accordance with due process." *Kentucky Power Co. v. Energy Reg. Comm'n of Kentucky*, Ky., 623 S.W.2d 904, 908 (1981). In the words of the Kentucky Supreme Court, "[p]ublic policy dictates [that public utility rate

proceedings] not be unnecessarily prolonged.” *Stephens v. Kentucky Utilities Company*, Ky., 569 S.W.2nd 155, 158 (1978). While the Commission should afford the AG a reasonable extension of time to conduct the AG’s investigation, the Commission should order the AG to file its report by a date certain so that the Commission can consider the Report and its recommendations, proceed with its own investigation and disposition of the rehearing of the effective tax rate issue, and issue final orders on rehearing. Finality is essential to the interest of all of the parties and the public, and is required as a matter of law.

To date, the Companies have cooperated with the reasonable investigative requests of the AG. These efforts by the Companies merit a brief review and consideration by the Commission.

As the Commission knows, the AG first raised the issue of “collusion” in remarks made publicly on May 6, 2004. (Transcript of Evidence dated May 6, 2004, pages 14-19). Counsel for all parties, including the AG, responded that they did not. *Id.* Nevertheless, following the issuance of the June 30, 2004, Rate Case Orders, on July 12, 2004, the AG issued the first Civil Subpoena and Investigative Demand (“First CID”) to LG&E and KU purportedly to investigate possible violations of the Kentucky Consumer Protection Act due to alleged “collusion” or improper contacts between LG&E and the Commission during the rate cases.¹ The AG also issued an Open Records Request to the Commission and CIDs to take interviews.

In response to the AG’s actions, the Commission issued an order dated July 15, 2004, in which it reopened the rate cases and scheduled an informal conference for August 4, 2004, to discuss a procedural schedule for the Commission’s investigation. Also, at the July 15, 2004, hearing before the Franklin Circuit Court, the Companies and the AG were directed to cooperate to narrow the First CID to a more reasonable scope. During the succeeding week, the parties

¹ The First CID superseded a prior set of subpoenas issued on July 7, 2004 which contained word processing errors.

negotiated in good faith and, on July 23, 2004, reached a letter agreement narrowing the scope of the First CID.

At the August 4, 2004, informal conference, the AG submitted its “Proposed Submission of Status Report and Motion to Hold Proceeding in Abeyance.” In that document, the AG requested the Commission to hold in abeyance its investigation and to allow the AG until September 30, 2004, to file his Report. In support of his request, the AG argued:

Clearly, a reasonable amount of time will be required to assess this data. For this reason, the PSC should hold its proceeding in abeyance until the Attorney General files its status report regarding the investigation. The tentative date for such filing is September 30, 2004.”

Id. The Companies did not object to the AG’s request. In response to the AG’s Motion, the Commission issued an order dated August 12, 2004, as follows: “. . . the Commission finds that it is reasonable and in the best interest of these proceedings to hold these rate cases in abeyance and to allow the AG to submit his report no later than October 12, 2004, and it will be held confidential pursuant to KRS 367.250.” The Commission went on to say:

Further, the Commission requests that the AG’s report contain factual findings in sufficient detail to assist or enable the Commission to determine if there have been any improper ex parte contacts relating to these cases. The AG’s report should also describe the actions, if any, that he recommends be taken by the Commission in response to his report. The Commission will thoroughly analyze the AG’s report and determine whether further proceedings are needed to resolve any of those issues.

The foregoing commentary was reiterated in the ordering paragraphs of the August 12th order. Thus, the Commission granted the AG 12 more days than requested or a total of 60 days from the date of the August 12, 2004, Order to conduct his investigation and file his report.

Pursuant to the July 23rd letter agreement, the Companies produced almost 10,000 pages of documents over the succeeding two weeks. An additional 2,000 pages were produced a week

thereafter. The collection, review, and processing of these documents involved more than 200 LG&E employees and was extremely disruptive and costly to LG&E, especially in light of the tight timeframe under which the AG had demanded compliance. By August 20, 2004, the Companies had produced approximately 12,000 pages of documents to the AG in response to the First CID.

Ten days later, on August 31, 2004, the AG served a second Civil Subpoena and Investigative Demand (“Second CID”) on the Companies. The Second CID was an even broader subpoena than the one served on LG&E six weeks previously. The AG described the scope of the Second CID as follows:

The most recent request requires production of documentation relating to meetings, parties or events attended by both LG&E and PSC employees for the limited time period of January 1, 2002 through June 30, 2004. The investigative demand further requests documentation showing LG&E’s payment for expenses, goods, services, meals or beverages on behalf of PSC employees for that same time period. The Attorney General also asked for records of lobbying expenses and copies of LG&E’s policies and procedures regarding lobbying and contacts with the PSC.

(AG’s Memorandum of Law in Support of Sanctions, p. 4). Upon receipt of the Second CID, which required full compliance in only ten days, LG&E again negotiated with the AG in good faith to reasonably narrow the scope of the subpoena, including an in-person negotiating session at the Office of the AG in Frankfort on September 7, 2004. While a limited number of discovery issues are currently under submission to the Franklin Circuit Court, in an effort to resolve the controversy, the Companies have continued to produce documents responsive to the Second CID pursuant to a September 20, 2004 letter from their counsel. Another 1048 pages of documents were produced to the AG on or before September 29, 2004.

In short, the record to date shows that the Companies have cooperated in good faith with the AG’s investigation. The scope of the Second CID, however, went far beyond the original

scope of the AG's investigation, which was whether improper contacts or "collusion" improperly influenced the result in the rate cases. To justify the expansion of his investigation, the AG has argued to the Franklin Circuit Court that the information is related to possible legislation reform when he said:

All of the inquiries are clearly related both to the Attorney General's investigation of potentially improper business practices and the investigation of whether proper policies are in place regulating contact between public utilities and the PSC.

* * * * *

The information sought will reveal the extent of the ex parte contact between LG&E and the PSC, as well as establish the necessary factual basis to support potential reform of state rules and policies relating to utility ratemaking.

(AG's Memorandum of Law in Support of Sanctions, pp. 5, 8) While the Companies will continue to cooperate with the reasonable requests of the AG, the AG's investigation has expanded the timeframe of the investigation another year to 2002. The AG has also sought to obtain the credit card records of LG&E employees whose jobs and purchases have nothing to do with the Commission or the rate cases. The ongoing disagreement regarding the proper scope of the Second CID, which is now before the Franklin Circuit Court, is therefore simply not a valid basis for extending the time for the AG to complete his investigation of the issues before this Commission regarding collusion and ex parte communications in these rate cases.

WHEREFORE, for these reasons, Louisville Gas and Electric Company and Kentucky Utilities Company request the Commission to enter an order granting the AG the shortest reasonable amount of time necessary to complete his investigation and file his report along with his recommendations with the Commission.

Dated: October 13, 2004

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response was served on the following persons on the 13th day of October 2004, U.S. mail, postage prepaid:

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